

## **-TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Ken Cohen, Asst. Town Administrator/797 1030

**PREPARED BY:** Ken Cohen, Asst. Town Administrator

**SUBJECT:** Resolution                      If other, please specify:

**AFFECTED DISTRICT:** District 3

**TITLE OF AGENDA ITEM:** A resolution of the Town of Davie authorizing the Mayor to execute a contract with Mr. Sam Jazayri for the sale of approximately 2.77 acres of property located near the Southeast Corner of State Road 84 and Scarborough Drive.

**REPORT IN BRIEF:** The approximately 2.77 acre site was slated to be donated by the Town for the Young at Art/County Library complex. The property zoning category was changed from B-2/RM5 to CF under Ordinance #97-10. The county calculated the property requirements for construction of the library and Young at Art facilities. It was determined that the site was too small to accommodate the total design requirements for the complex. The county subsequently found and purchased a suitable 11 acre site for the project. On February 6, 2002 the Town Council passed Resolution #R-2002-22 which, in summary, authorized the payment of \$300,000 to Young at Art from the property sale. This amount increased the total contributed by the Town, to the Young at Art portion of the project, to \$550,000.

An advertisement was placed in the local newspaper stating the Town was offering the property for sale. The three highest bids received were presented to Council. Resolution #R-2003-38 authorized the Town Administrator or his designee to negotiate a property sales agreement with the highest bidder, Sam Jazayri at \$610,000. The contract negotiated was reviewed by the Town Attorney and is attached.

**PREVIOUS ACTIONS:** Ordinance 97-10 changing the classification from B-2/RM5 to CF, (Attachment B). Resolution R-2002-22; authorizing the payment of up to \$300,000 to Young at Art from the property sale, (Attachment C). Resolution R-2003-38; authorizing the negotiation of a property sales agreement with the highest bidder, (Attachment D).

### **CONCURRENCES:**

**FISCAL IMPACT:** \$300,000 reimbursement to the Community Endowment Fund. \$310,000 (less the past due property taxes of approximately \$44,000) in revenue to the General Fund.

Has request been budgeted?    yes    no

    If yes, expected cost: \$

    Account Name:

    If no, amount needed: \$

Exhibit-A

**CONTRACT FOR SALE AND PURCHASE**

**THIS CONTRACT FOR SALE AND PURCHASE** is made this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the **TOWN OF DAVIE**, a municipal corporation of the State of Florida (hereinafter referred to as "**TOWN**"), whose address is 6591 SW 45<sup>th</sup> Street, Davie, Florida 33314; and **Mr. Sam Jazayri**, (hereinafter referred to as "**BUYER**"), whose address is 3001 W. HALANDALE BEACH BLVD #300 PEMBROKE PARK, FL 33009

**WHEREAS**, **TOWN** is the owner of that certain real property described more fully in Exhibit "A" attached hereto and made a part hereof, which **PROPERTY** is located within the Town of Davie, Broward County, Florida (the "**PROPERTY**"); and

**WHEREAS**, **BUYER** desires to enter into an agreement with **TOWN** in order to purchase the **PROPERTY**.

**NOW THEREFORE**, in consideration of the mutual promises, agreements, representations and warranties contained herein, and for such other good and valuable consideration, the **TOWN** agrees to sell and the **BUYER** agrees to purchase from the **TOWN**, the above referenced property on the following terms and conditions:

1. The aforesaid recitations are true and correct and are incorporated herein.
2. **PROPERTY**: The parties hereby agree that **TOWN** shall sell and **BUYER** shall purchase in "as is" condition the real property described in Exhibit "A" attached hereto and made a part hereof, situated, lying and being in Broward County, Florida, upon the terms and conditions hereinafter set forth.
3. **PURCHASE PRICE**: **BUYER** agrees to pay as and for the total purchase price for the **PROPERTY** in the manner and at the time hereinafter specified, the total sum of **SIX HUNDRED AND TEN THOUSAND DOLLARS (\$610,000.00)**, subject to the credits, prorations and adjustments hereinafter specified. **BUYER** shall give to **TOWN** a deposit of **FIFTY THOUSAND DOLLARS (\$50,000.00)** within ten (10) days of the execution of this Contract by **TOWN**. Said deposit sums shall be held in escrow by Seller's Attorney, Monroe D. Kiar. The **BUYER** shall make a payment of **FIVE HUNDRED AND SIXTY THOUSAND DOLLARS (\$560,000.00)** at closing to be made by cash, locally drawn certified or cashier's check or wire transfer.

This Contract shall be subject to the approval of the Davie Town Council and executed by **TOWN** upon receiving such approval. **TOWN** shall have the option to cancel this Contract for any reason whatsoever for a period of forty-five (45) days from the date of its execution of the Contract.

**BUYER** shall have the option to cancel this Contract for any reason whatsoever for a period of forty-five (45) days from the date of its execution of the Contract.

4. **CONVEYANCE:** The PROPERTY shall be conveyed by TOWN to BUYER at closing by delivery of a properly executed and acknowledged Warranty Deed in statutory form, subject only to the following ("Acceptable Exceptions"):

- (A) Zoning regulations and prohibitions imposed by governmental authority.
- (B) Taxes for the year of closing and subsequent years.
- (C) Such covenants, easements and restrictions that will not prevent the TOWN from conveying marketable title to BUYER.

5. **DUE DILIGENCE:** BUYER shall have forty five (45) days from the date of the execution of this Contract by TOWN and BUYER, in which to conduct its due diligence. During the Due Diligence period, the Seller grants Buyer, its agents and contractors the right to enter the Property at any time to conduct inspections at their own risk. Buyer shall defend, protect, indemnify and hold TOWN harmless against all claims, liabilities, loss, costs, or damages, whatsoever, related to any claim made by third parties, including court costs and attorney's fees, resulting or in connection with any activities conducted by BUYER on the Property. If this transaction does not close, Buyer at Buyer's expense shall repair all damages to the Property resulting from the inspections and return the Property to the condition it was in prior to conduct of the inspections and release to TOWN all reports and other work generated as a result of the inspections.

6. **GENERAL PROVISIONS:** Any charges to be prorated, including property taxes for the year of closing, shall be prorated as of the date of the closing.

7. **CLOSING:** It is agreed that this transaction shall be closed and BUYER shall pay to TOWN the purchase price, adjusted as provided herein, and all documents necessary to be executed by TOWN and SELLER shall be executed under the terms and conditions of this Contract within forty-five (45) days of the Town's execution.

8. **EVIDENCE OF TITLE:** TOWN will convey marketable title to the PROPERTY by statutory warranty deed.

(a) **Title Evidence:** Title evidence will show legal access to the Property and marketable title of record in TOWN, subject only to the following title exceptions: covenants, easements and restrictions of record; matters of plat; existing zoning and government regulations; oil, gas and mineral rights of record if there is no right of entry; current taxes; mortgages that BUYER will assume; and encumbrances that TOWN will discharge at or before closing. TOWN will, prior to closing, deliver to BUYER, TOWN's choice of one of the following types of title evidence:

1. A title insurance commitment issued by a Florida-licensed title insurer in the amount of the purchase price and subject only to title exceptions set forth in this contract.

2. A complete abstract of title from a reputable and existing abstract firm purporting to be an accurate synopsis of the instruments affecting Title updated to the date of delivery, showing the TOWN has marketable title. The abstract shall be delivered to BUYER no later than ten (10) days prior to closing. BUYER shall have five (5) days

from the date of receiving said abstract in which to examine same. BUYER shall within five (5) days of receipt of the abstract, deliver written notice to TOWN of any defects that make the title unmarketable. TOWN will have thirty (30) days from receipt of BUYER's notice of defects ("Curative Period") to cure the defects at TOWN's expense. If TOWN cures the defects within the Curative Period, TOWN will deliver written notice to BUYER and the parties will close the transaction on Closing Date or within 10 days from BUYER's receipt of TOWN's notice if Closing Date has passed. If TOWN is unable to cure the defects within the Curative Period, TOWN will deliver written notice to Buyer and Buyer will, within 10 days from the receipt of TOWN's notice, either cancel this Contract or accept title with existing defects and close the transaction.

9. **CLOSING COSTS:** TOWN will pay taxes on the deed and recording fees for documents needed to cure title and grant marketable title, including title evidence. BUYER will pay for owner's title policy and select title agent. BUYER will pay fees for all title searches. BUYER will pay the costs of recording the warranty deed and all costs relevant to any note or mortgage executed by BUYER, including taxes and recording fees on notes and mortgages and recording fees on the deed and financing statements, loan expenses. BUYER will pay lender's title policy at the simultaneous issue rate; inspections; survey and sketch; and insurance.

10. **TIME OF THE ESSENCE:** Time is of the essence throughout this Contract. Closing shall take place at the offices of Seller's attorney or such other place designated by Seller.

11. **BROKER'S COMMISSIONS:** The parties represent that the BUYER has consulted with Montalbano Commercial Realty, Inc. in connection with the sale and purchase of the Property and the Broker shall receive 3% of the Purchase Price to be paid by the BUYER.

12. **DEFAULT:**

- (A) In the event BUYER should refuse, neglect or otherwise fail to carry out any of the terms and conditions of this Contract, this Contract may be terminated at TOWN's election, or the TOWN may sue for specific performance.
- (B) In the event TOWN should refuse, neglect or otherwise fail to carry out any of the terms and conditions of this Contract, this Contract may be terminated at BUYER's election, or the BUYER may sue for specific performance.

13. **GOVERNING LAW:** This Contract is governed by and construed under the laws of the state of Florida as to matters of procedure and substantive law. All controversies or legal problems arising out of this transaction and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County,

Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation. No provision within this Contract shall be construed to grant any rights to Third Parties to sue any party to this Contract nor shall be construed as a waiver of sovereign immunity by TOWN.

14. **SUCCESSORS AND ASSIGNS:** BUYER may not assign this Contract without being granted prior written consent by TOWN. Contract shall be binding upon all parties and their permitted successors in interest and assigns, heirs and personal representatives.

15. **RULES OF CONSTRUCTION:** The terms and provisions set forth within this Contract are deemed to have been explicitly negotiated between and jointly drafted by the parties. The resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

16. **SEVERABILITY:** If any term or provision of this Contract, or the applicability of a term or provision to any person is to any extent invalid or unenforceable, the remainder of this Contract is not affected and continues in full force and effect.

17. **SURVIVAL OF CONTRACT:** The covenants and representations in this Contract shall survive delivery of deed and possession for a period of three (3) years from the date of closing.

18. **WAIVERS:** Failure of either party to insist upon strict performance of any covenant or condition of this Contract, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Contract shall be waived or modified except by the parties hereto in writing.

19. **MODIFICATIONS:** This Contract incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

20. **CONTRACT EFFECTIVE:** This Contract or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the parties until it is approved by TOWN. This Contract is subject to the requirements of Florida Statutes § 166.045 and approval of the Town Council is provided therein.

21. **NOTICES:** Whenever either party desires to give notice unto the other, it must be given in written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified as the place for giving of notice in compliance with the provisions of this paragraph. The parties may change the addresses at which notice is to be given by notice given as provided in this Article. Notices shall be deemed given when received by the addressee.

**AS TO TOWN:**

Tom Willi, Town Administrator  
6591 SW 45<sup>th</sup> Street  
Davie, Florida 33314

**WITH COPY TO:**

Monroe D. Kiar, Esquire  
Town Attorney  
6191 SW 45<sup>th</sup> Street, Suite 6151A  
Davie, Florida 33314

**BROKER:**

Patricia A. Montalbano  
Montalbano Commercial Realty, Inc.  
3921 S.W. 47<sup>th</sup> Ave. Suite 1018  
Fort Lauderdale, FL 33314

**SAM JAZAYRI:**

3001 W. HALLANDALE BEACH BLVD # 300  
PEMBROKE PARK FL 33009

IN WITNESS WHEREOF, the parties have made and executed this Contract on the respective dates under each signature: TOWN OF DAVIE through its TOWN COUNCILMEMBERS, signing by and through its MAYOR, authorized to execute same by COUNCIL ACTION ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2004 and executed by Mr. Jazayri the \_\_\_\_ day of \_\_\_\_\_, 2004.

**TOWN**

TOWN OF DAVIE

Attest:

BY \_\_\_\_\_

\_\_\_\_\_  
Town Clerk

\_\_\_\_ day of \_\_\_\_\_, 2004

BY \_\_\_\_\_  
Town Administrator

\_\_\_\_ day of \_\_\_\_\_, 2004

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

Witness my hand and seal this 13 day of JANUARY, A.D., 2004

Signed, sealed and delivered  
In the presence of:

BUYER:

T. L. Barnhill  
Witness

SAM JAZAYRI  
SAM JAZAYRI

T. L. Barnhill  
Print/Type Name

W L  
Witness

ANTHONY LEPORE  
Print/Type Name

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 13 day of JANUARY, 2004, by SAM JAZAYRI who ✓ is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

Mara Lepore  
Notary Public, State of Florida, at Large

Print/ Type or Stamp Name

My Commission Expires:

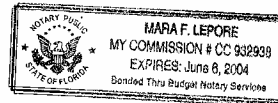




Exhibit B

ORDINANCE 97-10

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM B-1, B-2 AND RM-5 TO RM-10 AND CF; AMENDING THE TOWN ZONING MAP TO COMPLY THERWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town Council of the Town of Davie authorized the publication of a notice of a public hearing as required by law, that the classification of certain lands within the Town be changed from B-1, B-2, RM-5 to RM-10 and CF; and,

WHEREAS, said notice was given and publication made as required by law on December 4, 1996, and a public hearing thereunder was held on December 18, 1996

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE FLORIDA:

SECTION 1. That the property described in Exhibit "A," attached hereto and made a part hereof, be and the same is hereby rezoned and changed from B-1, B-2 and RM-5 to RM-10 and CF.

SECTION 2. That the zoning map heretofore adopted by the Town Council be and the same is hereby amended to show the property hereinabove described as RM-10 and CF.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS 18<sup>th</sup> DAY OF December 1996.

PASSED ON SECOND READING THIS 5<sup>th</sup> DAY OF February 1997.

ATTEST:

Town Clerk

APPROVED THIS 5<sup>th</sup> DAY OF February 1997

Mayor/Councilmember

Exhibit C

Resolution R-2002-22

A RESOLUTION OF THE TOWN OF DAVIE FLORIDA AUTHORIZING THE DISBURSEMENT OF FUNDS AND THE ISSUANCE OF AN ADVANCE FOR THE YOUNG AT ART PROJECT.

WHEREAS, the Town of Davie committed a total donation of \$250,000 towards the Young At Art project for the construction of a museum and county library site; and

WHEREAS, the Town of Davie seeks to disburse \$100,000 of this commitment to Young At Art with the remaining balance payable to Young At Art in increments as directed by the Town Administrator not to exceed \$250,000 in total donations; and

WHEREAS, in addition the Town of Davie previously received donated land which the Town was to deed over to Young At Art for their project; and

WHEREAS, the Town of Davie now finds it desirous to sell this land and provide the cash value to Young At Art as this land was found to be incompatible with the project; and

WHEREAS, the Town of Davie seeks to issue an advance to Young At Art in the amount of \$300,000 pending the sale of the property and receipt of the property deed identifying the Town of Davie as the property owner; and

WHEREAS any profit or loss realized as a result of the sale of said property shall be incurred by the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the Town Council of the Town of Davie hereby authorizes the disbursement of a \$100,000 donation to Young At Art from the Community Endowment Special Revenue Fund with the remaining balance disbursed to Young At Art in increments as directed by the Town Administrator not to exceed in total, \$250,000.

SECTION 2. That the Town Council of the Town of Davie hereby authorizes an advance to Young At Art in the amount of \$300,000 from the Community Endowment Special Revenue Fund to be repaid upon the sale of the property. However, none of the \$300,000 will be advanced until a property deed is presented identifying the town as the property owner.

SECTION 3. That upon the sale of the property the Community Endowment Special Revenue Fund will be repaid up to its \$300,000 advance and additional proceeds, if any, will be credited to the General Fund of the Town.

**SECTION 2.** That the Town Council of the Town of Davie hereby authorizes an advance to Young At Art in the amount of \$300,000 from the Community Endowment Special Revenue Fund to be repaid upon the sale of the property. However, none of the \$300,000 will be advanced until a property deed is presented identifying the town as the property owner.

**SECTION 3.** That upon the sale of the property the Community Endowment Special Revenue Fund will be repaid up to its \$300,000 advance and additional proceeds, if any, will be credited to the General Fund of the Town.

**SECTION 4.** This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS 6<sup>th</sup> DAY OF February 2002

ATTEST:

Judy Pail  
Mayor/Councilmember

Russell H. H. H.  
Town Clerk

APPROVED THIS 6<sup>th</sup> DAY OF February 2002

Exhibit D

RESOLUTION R-2003-38

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA PLACING THE THREE HIGHEST BIDS FOR THE FORMER YOUNG AT ART MUSEUM SITE IN ORDER OF PRIORITY AND DIRECTING THE TOWN ADMINISTRATOR OR HIS DESIGNEE TO NEGOTIATE A PROPERTY SALES AGREEMENT WITH THE TOP SELECTION. IF AN AGREEMENT CANNOT BE REACHED WITH THE TOP SELECTION THAN AUTHORIZING THE TOWN ADMINISTRATOR TO NEGOTIATE A PROPERTY SALES AGREEMENT WITH THE SECOND CHOICE.

WHEREAS, the Town of Davie received this land through a donation which the Town was to deed over to Young At Art for their new museum facility; and

WHEREAS, Young At Art and Broward County combined to expand the facility or other property more suited to the larger project; and

WHEREAS, this property now is deemed to have outlined its usefulness or is not needed for public purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the Town Council of the Town of Davie does hereby accept the offer of \$610,000 made by Sam Jazayri for the purchase of the property of the former Young At Art Museum site and authorizes the Town Administrator or his designee to negotiate an agreement for such sale and present that contract for approval at a future meeting date. Should no agreement be reached with the highest bidder then the Town Administrator or his designee shall negotiate with the next highest bidder and present that agreement for approval.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS 5<sup>th</sup> DAY OF February, 2003

Ben Clark  
MAYOR/COUNCILMEMBER

ATTEST:

Russell Klunz  
TOWN CLERK

APPROVED THIS 5<sup>th</sup> DAY OF February, 2003